

Supreme Court, U.S.
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IN THE OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

JIN RIE,

Plaintiff and Petitioner.

v.

RON S. GALPERIN,

Defendants and Respondents.

On Petition for Writ of Certiorari
To The United States Supreme Court

PETITION FOR WRIT OF CERTIORARI

Petitioner/Appellant in Pro Per:

Jin Rie

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I. QUESTIONS PRESENTED FOR REVIEW

The question presented in this petition is what standard of review is applicable when the Court fails to give a civil litigant warning regarding the dangers and risks of self-representation in a complex civil case, similar to the warning given in complex federal civil cases and criminal cases, which requires that a defendant "be made aware of the dangers and disadvantages of self-representation, so that the record will establish that he knows what he is doing and his choice is made with eyes open."¹

The second question is whether California Civil Code § 2966 requires actual receipt by a trustor of notice of balloon payment.

The third question is whether the alleged judicial admission made by the Petitioner in another old case can be applied to a related but separate case through abusing an exhibit of the third case.

The fourth question is whether Petitioner did, in fact, make a judicial admission and whether interpreting his statement as a judicial admission violates Petitioner's 14th Amendment right to a fair trial and due process.

¹ Faretta v. California, 422 U.S. 806, 835, 45 L. Ed. 2d 563, 95 S. Ct. 2525 (1975).

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II. OPINIONS BELOW

On October 7, 2003, the Trial Court dismissed Petitioner's action against Ron S. Galperin and his law firm, the Law Offices of Ron S. Galperin. On January 10, 2005, the Court of Appeal Second Appellate District Division Four affirmed the Trial Court's decision. On March 30, 2005 the Supreme Court of California denied review of the Petitioner's Appeal in an unpublished opinion.

III. JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. §1331. The question presented by this petition is an important question of federal law under Supreme Court Rule 10(c) that has not been settled by this Court and is thus subject to review before the Supreme Court of the United States.

IV. STATUTORY PROVISIONS INVOLVED

The statutes and rules involved are set forth in the Appendix to this Brief ("App."). The statutes and rules involved are: California Code of Civil Procedure § 473; IV Witkin Cal. Crim. Law Crim Trial § 256; Title 28 U.S.C. § 1915; 28 U.S.C.S. §255; California Rules of Court §1800; Government Code section 68607; Cal Civ Code § 2966.

V. STATEMENT OF THE CASE

This case is related to the appeal in Rie v. Rosen, case number B169669, in the sense that

Appellant Jin Rie blames respondent Ron S. Galperin and his law firm, the Law Offices of Ron S. Galperin ("Galperin") for the loss of certain claims against defendants in that action. As we explained in the related appeal, in 1992, Rie and his wife Cheon Rie purchased property from Asadur and Petra Tursugian who held back a second deed of trust. In 1999, the

Tursugians foreclosed on the deed of trust. The property was purchased at the foreclosure sale by 6 Angels, Inc.

In June 2002, the Ries filed a lawsuit against the Tursugians; their attorney Alan Rosen; his law firm, the Law Offices of Rosen and Loeb; and the company that had handled the foreclosure, SBS Trust Deed Network (SBS). That complaint, Rie v. Rosen, case no. BC275364, is the subject of appeal no. B169669.

Prior to the filing of that complaint, Galperin had initiated on behalf of Rie another action against the Tursugians, SBS, and 6 Angels, claiming that they had engaged in misrepresentation and breach of contract in connection with the foreclosure and seeking an accounting and declaratory relief, Rie v. 6 Angels, case number BC223268. That action, initiated by a verified complaint, was apparently filed in January 2000. The verified complaint contained an allegation stating: "Although the Notice Pursuant to Civil Code 2966 was required at the time the note became due in 1993, it was not until January 7, 1999 that Defendant Tursugian served the required Notice." In addition, attached as Exhibit H to the complaint was a copy of a "Notice Pursuant to Civil Code Section 2966² dated January 7, 1999,³ signed by Rosen on behalf of the Tursugians. The document stated that the balance due on the note should be paid on April 15, 1999.

² The final payment under the Tursugian note was to be a balloon payment. Civil Code section 2966 (section 2966) requires holders of notes containing balloon payment provisions to "deliver or mail by first-class mail, with a certificate of mailing obtained from the United States Postal Service, to the trustor, or his or her successor in interest, at the last known address of such person a written notice" that includes "the date on or before which the balloon payment was or is required to be paid." This notice is to be sent "not less than 90 nor more than 150 days before the balloon payment is due[.]" (§ 2966, subd. (a).) Failure to provide notice within that time frame "does not extinguish any obligation of payment by the trustor[.]" (§ 2966, subd. (b).) But "the due date for any balloon payment shall be the date specified in the note, or 90 days from the date of the delivery or mailing of the notice, or the date specified in the notice, whichever date is later."

³ However, as stated at P 2-3 of the Appellate Brief, this Notice (i.e., Exhibit H) was mailed to Rie together with the cover letter dated April 14, 1999, and it was never received in January of 1999 by Ries. See Argument E and G.

Galperin ceased representing Rie in June 2000, apparently due to the breach of agreement that Rosen and his law firm would be added as defendants. Prior to Galperin ceasing the representation, 6 Angels surrendered title to the property to the Ries and was dismissed from the case, and the Tursugians demurred to the complaint. One basis for the demurrer was that they had "strictly complied" with section 2966 in that their attorney Rosen sent the Ries the required section 2966 notice on January 7, 1999. The opposition to the demurrer prepared by Galperin stated: "There is no evidence that [the Tursugians] complied with Civil Code Section 2966(a), which requires that the Notice be 'delivered or mailed by first-class mail, with a certificate of mailing obtained from the United States Postal Service'" and that "the Notice pursuant to Civil Code Section 2966 is unclear as to the amount due, the interest accrued and the dates." The demurrer was overruled. In late 2000 or early 2001, for reasons that are not set forth in the record, the Rie v. 6 Angels action was dismissed.

The Rie v. Rosen lawsuit filed in June 2002 alleged, among other things, that the Tursugians and Rosen "claimed to have given notice . . . in January 1999 of a balloon payment"; that the Ries "had not received such notice from any of the defendants concerning any such balloon payment due date"; and that the Tursugians "attempted to back-date notices of balloon payments in order to demonstrate compliance with the 90 day advance notice requirements . . . of section 2966." It was the subject of several demurrs. In ruling on two of the demurrs in February and July 2003, the trial court in that action sustained without leave to amend as to causes of action for wrongful foreclosure and misrepresentation based in part on the above-quoted statement from the verified complaint in Rie v. 6 Angels that the required section 2966 notice was served on January 7, 1999. In its orders, the court specifically stated: "In ruling on Defendants' prior demurrer, the court took judicial notice of [the Ries'] verified complaint that was filed in [Rie v. 6 Angels,] case BC223268, and the allegations in P20 of that complaint that [the] Tursugians had served notice of the balloon payment on 1/7/99. The court found that this allegation amounted to an admission by

[the Ries] that they had received the requisite notice as of 1/7/99." This meant, among other things, that "[the Ries] knew, or reasonably should have known, as of that date that the defendants' representations regarding the alleged payment arrangement were false and that the defendants did not intend to honor it." Further, it eliminated the most important basis for the wrongful foreclosure action: that the Tursugians failed to give notice required by section 2966 prior to foreclosing.

On or about February 25, 2003, after the first of these adverse rulings, Rie filed a complaint for legal malpractice against Galperin. The first amended complaint (FAC), filed after demurrer was sustained, alleged causes of action for legal malpractice, intentional deceit, negligent misrepresentation, and breach of agreement. The claims were based in large part on the statement in the verified complaint in the Rie v. 6 Angels lawsuit concerning the section 2966 notice. Rie contended that the statement was ambiguous, that he did not understand the significance of it at the time, and that he was pressed by Galperin to sign the verified complaint without having sufficient time to thoroughly review it. The FAC alleged that the significance of the statement did not become apparent until January 2003, when it was first quoted by the defendants in the Rie v. Rosen lawsuit, and swayed the trial court to sustain the demurrer to two causes of action.

Galperin demurred based on failure to state a viable claim and expiration of the statute-of limitations. The demurrer was sustained without leave to amend. Judgment was entered in favor of Galperin. The appeal followed.

VI. PROCEDURAL HISTORY

These cases were initially brought before Honorable James Chalfant in the Los Angeles County Superior Court. That court entered ruling on September 15, 2003. Petitioner timely filed a motion to appeal with the Second District Court of Appeals. That case was briefed and later argued and submitted on October 22, 2004.

On March 30, 2005, the Supreme Court of California denied the petition for review.

VII. SUMMARY OF THE ARGUMENT

The desirability of exercising exceptional judicial management in complex proceedings has been recognized in several federal and state cases and statutes.⁴ Under 28 U.S.C.S. § 1915(d), the Court may request an attorney to represent a person in a civil proceeding when issues presented by the case are so complex that denial of counsel would be likely to result fundamental unfairness.⁵ Further, in criminal cases, before a criminal defendant may represent himself at trial, the defendant must knowingly and intelligently waive his right to trial.⁶ The danger of self-representation in complex civil matters is also recognized at the state level implicitly in California Rules of Court Rule (C.R.C.) 1800, which encourages judges faced with a complex case to consider issuing case management order or similar remedy to supervise complex litigation.

The above rules recognize that self-representation is almost always unwise⁷, particularly in criminal and complex civil cases where the opposing counsel is experienced, professional counsel who has the advantage of skill, training and experience. In addition, such cases involve complex facts and questions of law, which are unfamiliar to self-represented parties. The result is that the self-represented parties may easily conduct his or her case in a manner to his or her own detriment.

⁴ See e.g., Carnley v. Carnley, 1962, 369 U.S. 506, 82 S.Ct. 884, 8 L.Ed.2d 70; Barnhill v. Doiron, 958 F.2d 200, 202 (7th Circuit 1992); Hernandez v. The Superior Court of the State of California, 112 Cal. App. 285, 4 Cal. Rptr. 3d 883 (2003); Volkswagen of America, Inc., et. al. v. The Superior Court of the City and County of San Francisco, 94 Cal. App. 4h 695; 114 Cal. Rptr. 541 (2001).

⁵ United States ex rel Wissenfeld v. Wilkins, 2 Cir. 1960, 281 F 2d 707

⁶ Faretta v. California, 422 U.S. 806 835, 45 L. Ed. 2d 562, 95 S. Ct. 2525 (1975).

⁷ IV Witkin Cal. Crim. Law § 256 (a) (2).